

UNITED STATES DEPARTMENT OF AGRICULTURE

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BEFORE THE SECRETARY OF AGRICULTURE

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In re:) AWA Docket No. 15-0113
)
CITY OF CLAY CENTER, a municipality)
doing business as CLAY CENTER ZOO,)
)
Respondent.) CONSENT DECISION AND
ORDER

This proceeding was instituted under the Animal Welfare Act, as amended (7 U.S.C. § 2131 et seq.)(AWA or Act), by a complaint filed by the Administrator, Animal and Plant Health Inspection Service, United States Department of Agriculture, alleging that the respondent willfully violated the regulations and standards issued pursuant to the Act (9 C.F.R. § 1.1 et seq.). This decision is entered pursuant to the consent decision provisions of the Rules of Practice applicable to this proceeding (7 C.F.R. § 1.138).

Respondent admits the jurisdictional allegations in the complaint and specifically admits that the Secretary has jurisdiction in this matter, admits certain of the remaining allegations as set forth herein as findings of fact and conclusions of law, neither admits nor denies the remaining allegations, waives oral hearing and further procedure, and consents and agrees, for the purpose of settling this proceeding, to the entry of this decision. The complainant agrees to the entry of this decision.

FINDINGS OF FACT

1. City of Clay Center is a municipality in Kansas doing business as the Clay Center Zoo (Clay Center Zoo), and whose business mailing address is Post Office Box 37, Clay Center, Kansas 67432. At all times mentioned herein, respondent Clay Center Zoo was an exhibitor, as that term is defined in the Act and the Regulations, and held AWA license 48-C-0017.

2. On or about the following dates, respondent failed to provide adequate veterinary care

for animals and/or failed to establish programs of adequate veterinary care that included the use of appropriate methods to prevent, control, and treat diseases and injuries, and/or a mechanism of direct and frequent communication in order to convey timely and accurate information about animals to the attending veterinarian:

a. March 27, 2012. Respondent maintained expired medications (Conofite and Tylan 50) for use on animals, and stored medications in the same cabinet as toxic substances, such as pesticides.

b. March 27, 2012. Respondent failed to provide adequate care to the following animals, which animals had not been seen by a veterinarian for the conditions observed by the APHIS inspector:

i. A male rabbit with visible ear problems, specifically, both ears had areas of redness and rough, scabbed skin that were sensitive to touch.

ii. A grey fox was laterally recumbent and exhibiting behaviors consistent with seizures, walked tentatively, and appeared disoriented.

iii. A male arctic fox exhibited reluctance to walk, and when he did walk, had an abnormal gait.

c. July 10, 2012. Respondent failed to provide adequate care to the following animals:

i. A male Arctic fox continued to exhibit an abnormal, weak gait, and respondent had not remained in contact with its attending veterinarian to ensure that the fox's condition was managed appropriately.

ii. Respondent did not consult with a veterinarian regarding two infant

coatimundi, neither of which survived in respondent's care.

d. November 7, 2012. Respondent failed to provide adequate care to a groundhog with visible hair loss, reddened, raw skin, and several scrapes or cuts, which groundhog had not been seen by a veterinarian for these conditions.

e. November 7, 2012. Respondent failed to develop and implement a written program of veterinary care that contained a plan for regular vaccinations and parasite prevention.

f. November 7, 2012. Respondent maintained multiple expired or improperly-labeled medications for use on animals.

g. April 17, 2013. Respondent failed to provide adequate care to a cat (#4), and specifically, failed to vaccinate the cat for rabies.

h. April 3, 2014. Respondent failed to provide adequate care to a male coatimundi, and specifically, failed to have a follow-up examination by the attending veterinarian, who last saw the coatimundi on December 5, 2013.

i. March 11, 2015. Respondent failed to provide adequate care to the following animals, which animals had not been seen by a veterinarian for the conditions observed by the APHIS inspector:

i. A grey rabbit with extensive hair loss on the outside of its right rear leg.

ii. A brown rabbit with patchy hair loss on its left shoulder, side and hip.

3. On or about the following dates, respondent failed to handle animals as required:

a. March 27, 2012. Respondent failed to handle the following animals as

carefully as possible, and during exhibition failed to handle animals so that there was minimal risk of harm to the animals and the public, with sufficient distance and/or barriers between the animals and the public to ensure the safety of both the animals and the public

i. There is a gap in the public barrier in front of the bear enclosure that is large enough to permit a child to pass through and gain access to the primary enclosure.

ii. The chain link fencing atop the stone wall that serves as a barrier in front of the bear and wolf enclosures has pulled away from the stone wall, and both the bear and wolf primary enclosures are within reach of the public.

iii. There is no effective public barrier preventing public access to the raccoon enclosure.

iv. There is neither distance nor any barrier separating the rabbit and squirrel enclosures from the public.

b. March 27, 2012, July 10, 2012, November 7, 2012, August 21, 2013.

Respondent (1) failed to handle animals as carefully as possible, (2) failed, during exhibition, to handle animals so that there was minimal risk of harm to the animals and the public, with sufficient distance and/or barriers between the animals and the public to ensure the safety of both the animals and the public, (3) exhibited animals during periods of time that were inconsistent with their good health and well-being, and (4) exhibited animals without any personnel on site, and outside the control and supervision of knowledgeable and experienced personnel.

c. April 3, 2014. Respondent failed to handle two juvenile white-tailed deer as

carefully as possible, and during exhibition failed to handle the deer so that there was minimal risk of harm to the animals and the public, with sufficient distance and/or barriers between the deer and the public to ensure the safety of both the animals and the public.

CONCLUSIONS OF LAW

1. On or about the following dates, respondent willfully violated the Regulations governing attending veterinarian and adequate veterinary care:

- a. March 27, 2012. Using expired medications and storing medications adjacent to toxic substances. 9 C.F.R. § 2.40(b)(2).
- b. March 27, 2012. Male rabbit, a grey fox, and male Arctic fox (9 C.F.R. §§ 2.40(a), 2.40(b)(2)).
- c. July 10, 2012. Male Arctic fox, and two infant coatimundi (9 C.F.R. §§ 2.40(a), 2.40(b)(2), 2.40(b)(3)).
- d. November 7, 2012. Groundhog. 9 C.F.R. §§ 2.40(a), 2.40(b)(2), 2.40(b)(3).
- e. November 7, 2012. Written program of veterinary care for regular vaccinations and parasite prevention. 9 C.F.R. §§ 2.40(a)(1), 2.40(b)(1), 2.40(b)(2).
- f. November 7, 2012. Expired or improperly-labeled medications. 9 C.F.R. § 2.40(b)(2).
- g. April 17, 2013. Cat (#4). 9 C.F.R. §§ 2.40(a)(1), 2.40(b)(1), 2.40(b)(2).
- h. April 3, 2014. Male coatimundi. 9 C.F.R. §§ 2.40(a), 2.40(b)(2), 2.40(b)(3).
- i. March 11, 2015. Grey rabbit and brown rabbit (9 C.F.R. §§ 2.40(a), 2.40(b)(2)).

2. On or about the following dates, respondent willfully violated the Regulations

governing the handling of animals:

a. March 27, 2012. Respondent failed to handle animals (bears, wolves, raccoons, squirrels, and rabbits) as carefully as possible, and during exhibition failed to handle animals so that there was minimal risk of harm to the animals and the public, with sufficient distance and/or barriers between the animals and the public to ensure the safety of both the animals and the public (9 C.F.R. §§ 2.131(b)(1), 2.131(c)(1)).

b. March 27, 2012, July 10, 2012, November 7, 2012, August 21, 2013. Respondent (1) failed to handle animals as carefully as possible, (2) failed, during exhibition, to handle animals so that there was minimal risk of harm to the animals and the public, with sufficient distance and/or barriers between the animals and the public to ensure the safety of both the animals and the public, (3) exhibited animals during periods of time that were inconsistent with their good health and well-being, and (4) exhibited animals without any personnel on site, and outside the control and supervision of knowledgeable and experienced personnel (9 C.F.R. §§ 2.131(b)(1), 2.131(c)(1), 2.131(d)(1), 2.131(d)(2), 2.131(d)(3)).

c. April 3, 2014. Respondent failed to handle two juvenile white-tailed deer as carefully as possible, and during exhibition failed to handle the deer so that there was minimal risk of harm to the animals and the public, with sufficient distance and/or barriers between the deer and the public to ensure the safety of both the animals and the public (9 C.F.R. §§ 2.131(b)(1), 2.131(c)(1)).

3. Respondent having admitted the findings of fact set forth above, and the parties having agreed to the entry of this decision, such decision will be entered.

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ORDER

1. Respondent, its agents and employees, successors and assigns, directly or through any corporate or other device, shall cease and desist from violating the Act and the Regulations and Standards.

2. Respondent is assessed a civil penalty of \$7,500.

3. AWA license number 48-C-0017 is hereby suspended for one month, beginning September 8, 2015, and continuing thereafter until such time as respondent attains compliance with the Act and the Regulations.

The provisions of this order shall become effective immediately. Copies of this decision shall be served upon the parties.

CITY OF CLAY CENTER, a municipality
doing business as CLAY CENTER ZOO
Respondent

By

Bill Callaway
Supt. of Utilities

Colleen A. Carroll
Attorney for Complainant

Done at Washington, D.C.,
this 17 day of ~~July~~ 2015

AUG 2015

Administrative Law Judge